Supreme Court, U.S.
FILED

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No.

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in the

# Supreme Court Of The United States

October Term 1994

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JOSEPH R. CATERINA
AND ALL OTHERS SIMILARLY SITUATED, ET AL.
Petitioners

vs.

BLAKELY BOROUGH; ARCHBALD BOROUGH; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; LACKAWANNA COUNTY; DEPARTMENT OF ENVIRONMENTAL RESOURCES OF PA.; DEPARTMENT OF GENERAL SERVICES OF PA.; GENERAL STATE AUTHORITY OF PA.; LACKAWANNA COUNTY SHERIFF'S OFFICE; UNITED STATES ARMY CORPS OF ENGINEERS; U.S. DEPARTMENT OF INTERIOR; CECO ASSOCIATES, INC., a Corporation of PA.; PA. DEPARTMENT OF TRANSPORTATION; THE LAW FIRM OF FOLEY, MCLANE, NEALON, FOLEY & MCDONALD; JOSEPH M. MCDADE; JOHN ORMASA; HILLS OF ARCHBALD; INC., a corporation of PA.; UNKNOWN OWNERS LEO ZINI & MARK ZINI, 528-526 SHORT AVE., PECKVILLE, PA.; U.S. DEPARTMENT OF SURFACE MINING IN N.E. PA.; and EDWARD J. GHILARDI; ET AL.

Respondents

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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## PETITION FOR WRIT OF CERTIORARI

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JOSEPH R. CATERINA, and ALL OTHERS SIMILARLY SITUATED, ET AL., Pro Se
202 Kenyon Drive, Peckville, PA. 18452
(717) 489-8741 or 489-6883

Dec. 12, 1994

## QUESTIONS PRESENTED FOR REVIEW

1) Whether the United States District Court for the Middle District of Pennsylvania had jurisdiction of the case invoked by the Petitioners, alleging damages inflicted upon them by Respondents in violation of the Fourth Amendment of the United States Constitution.

2) Whether the United States District Court for the Middle District of Pennsylvania had jurisdiction of the case invoked by the Petitioners, wherein no Environmental Impact Statement showing no harm would result in a 500% increased watershed to the Petitioners, was ever obtained.

3) Whether the Third Circuit Court of Appeals imposition of sanctions, (penalty requiring the appellant to pay double costs to Respondents) was appropriate or an infringement of the Petitioners' constitutional rights under the circumstances, violative of the Fourth, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution.

4) Whether the District Court arbitrarily dismissed the case erroneously stating it lacked subject matter jurisdiction.

5) Whether the Court of Appeals, wrongfully upheld the District Court.

6) Whether both the District Court and the Court of Appeals compounded that error by granting double expenses against Petitioners.

7) Whether the Petitioners have a **'Right'** to defend themselves in court from an **'inherent danger'**!

## LIST OF PARTIES

**Joseph R. Caterina, Pro Se**
**202 Kenyon Drive, Peckville, PA. 18452**
**(717) 489-8741**

**Represents Petitioner:**
Joseph R. Caterina, 202 Kenyon Drive, Peckville, PA. 18456

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If Writ of Certiorari is Granted:

**Attorney David L. Kurtz**
**L.A. Law Firm**
**P.O. Box 107 F, RD #4**
**Lake Ariel, PA. 18436**
**(717) 689-9840**

Will Represent **Petitioner:**

**Joseph R. Caterina**
**202 Kenyon Drive, Peckville, PA. 18456**

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**Petitioners:** All Others Similarly Situated:
**Are Not Represented**
(See Notice To Court: Page 16)

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**Atty. Mr. Harry T. Coleman, Esq., Abrahamsen, Moran & Conaboy, 205 N. Washington Ave., W.C. Carter Building, Scranton, PA. 18503, (717) 348-0200, Represents The Following Respondents:**

Edward J. Ghilardi, 203 Kindsley Blvd., Peckville, PA. 18452

Blakely Borough, 1439 Main St., Peckville, PA. 18452

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**Atty. Mr. Sean P. McDonough, Esq., Dougherity, Leventhal & Price, 425 Spruce Street, Rite Aid Building, 3rd Floor, Scranton, PA. 18503, (717) 347-1011, Represents The Following Respondents:**

Borough of Archbald, 274 Laurel St., Archbald, PA. 18403

**Attys. John S. Huckenpoehler, Esq., Mr. Gregory J. Pascale, Esq., Needle and Goldenziel, P.C., 240 Penn Ave., Scranton, PA. 18509, (717) 344-1266, Represents The Following Respondents:**

Hills of Archbald, Inc., c/o Jack Altier, Pres., 107-109 Maria Blvd., Archbald, Pa. 18403

Leo Zini, 1005 Main St., Peckville, PA. 18452

Marc Zini, 1005 Main St., Peckville, PA. 18452

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**Atty. Mr. James A. Doherty, Jr., Esq., Scanlon, Howley, Scanlon & Doherty, 1000 Bank Towers, 321 Spruce St., Scranton, PA. 18503, (717) 346-7651, Represents The Following Respondents:**

CECO Associates, Inc., Suite 202, Scranton Electric Bldg., P.O. Box 995, Scranton, PA. 18501

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**Attys. Mrs. M. Colleen Foley Canovas, Esq., Mr. Thomas J. Foley, Jr., Esq., Foley, McLane, Nealon, Foley & McDonald, P.C., 600 Linden St., Linden Plaza, Scranton, PA. 18501-1108, (717) 342-8194, Represents The Following Respondents:**

Lackawanna County, County Office Building, 200 Adams Avenue, Scranton, PA. 18503

Lackawanna County Redevelopment Authority, 200 Adams Avenue, Scranton, Pa. 18503

Lackawanna County Sheriffs Office, Lackawanna Co. Courthouse, Scranton, PA. 18503

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**Attys. Mr. Charles Tiefer, Gen Counsel, Mr. Michael L. Murray Sr. Asst., Mr. Richard P. Stanton Asst. Counsel**

**Office of General Counsel, U.S. House of Representatives,The Capitol, H-112, Washington, D.C. 20515, (202) 225-9700, Represents The Following Respondents:**

Joseph M. McDade, U.S. Rep., M.C., 10th Dist. of Pa., Room 2370 Rayburn House Office Building, Washington, D.C. 20515

John Ormasa, Legislative Asst., 10th District of PA., Room 2370 Rayburn House Office Building, Washington, D.C. 20515

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**Attys. Mr. Michael J. Daley, Esq., Atty. for General State Authority, Ms. Catherine A. Foley, Esq., Atty. for Dept. Gen Services, Dept. Transportation, Dept. Environmental Resources, 603 North Office Building, Harrisburg, PA. 17125, (717) 787-5599, Represents The Following Respondents:**

General State Authority of Pennsylvania (GSA), 515 North Office Bldg., Harrisburg, PA. 17125

Department of General Services Of Pennsylvania, 603 North Office Building, Harrisburg, PA. 17120

Secretary, Department of Transportation of Pennsylvania, Transportation & Safety Bldg., Harrisburg, Pa. 17120

Department of Environmental Resources of Pennsylvania, P.O. Box 2063, Harrisburg, PA. 17105-2063

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**Atty. Mr. Ernest D. Preate, Esq., Attorney General of Pennsylvania, 16th Floor, Strawberry Square, Harrisburg, PA. 17120, Represents The Following Respondents:**

Commonwealth of Pennsylvania, Attorney General Office, 1515 Strawberry Square, Harrisburg, Pa. 17108

**Attys. Ms. Lois J. Schiffer, Asst. Atty. Gen., Mr. Wayne P. Samuelson, U.S. Atty., Harrisburg, PA., Mr. Robert L. Klarquist and Ms. Joan M. Pepin, Attys. Dept. Justice,Washington, D.C. 20530, Atty., Appellate Section, Environment & Natural Resources Div., U.S. Department of Justice, P.O. Box 23795, L'Enfant Plaza Station, Washington, D.C. 20026, (202) 514-4519, Represents The Following Respondents:**

U.S. Dept. of Surface Mining, Wilkes-Barre Region Office, 20 N. Pennsylvania Ave., Suite 3312, Wilkes-Barre, PA. 18701

Secretary of U.S. Dept. Interior, Main Interior Bldg., 849 'C' Street, Washington, D.C. 20240

U.S. Army Corps of Engineers c/o Lt. Gen. Henry J. Hatch, 20 Massachuetts Ave., N.W., Washington, D.C. 20314

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**United States Attorney, Janet Reno, Rm. 511, 10th & Constitution Ave., N.W., Washington, D.C. 20503**

**Mr. Drew S. Days III, Solicitor General, U.S. Department of Justice, Washington, D.C. 20530**

**U.S. Attorney, (M.D. of PA.), U.S. Department of Justice, Federal Building, 228 Walnut Street, Harrisburg, Pa. 17108, Represents The Following Respondents:**

United States of America

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**Office of the Clerk, U.S. Court of Appeals for the Third circuit, 601 Market St., 21400 U.S. Courthouse, Philadelphia, P.A. 19106-1790, (215) 597-4495**

**Office of the Clerk, U.S. District Court, (M.D. of PA.) P.O. Box 1148, Scranton, PA. 18501, (717) 347-0205;**

Lower Courts of the United States

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**violative of the Fourth, Fifth, Ninth and Fourteenth Amendments of the U.S. Constitution.**

2) **The Petitioners have a basic right . . . to be secure in their, persons, houses, papers, and effects, . . . against unreasonable . . . seizures, shall not be violated . . . from an 'inherent danger' newly created by government as it is not reasonable to divert a river in volume knowing that inevitably a catastrophic flood will be created heretofore nonexistent or possible.**
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Respondents.

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## PETITION FOR WRIT OF CERTIORARI

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The Petitioners, Joseph R. Caterina and all others similarly situated, et al, respectfully pray that the **Petititon For Writ of Certiorari** be issued to review the judgement order of the United States Court of Appeals for the Third Circuit in **Joseph R. Caterina, and all those similarly situated v. Blakely Borough et al,** No. 93-7565 (3rd Cir. August 18, 1994).

## OPINION BELOW

The Court is to review the Order Denying **'Sur Petition For Rehearing'** of the United States Court of Appeals for the Third Circuit, **not dated** (September 14, 1994), is reprinted in the Appendix hereto, at page App. 3, **infra.**

The **'Judgement Order'** of the United States Court of Appeals for the Third Circuit is unpublished, and is reprinted in the Appendix hereto, at page App. 1 & 2, **infra.** Said 'Judgement Order' was without an opinion.

Additionally the Court should review the Order rendered in this proceeding on 22 September 1994, by the U.S. Court of Appeals for the Third Circuit **'Mandate'** to Petitioners to pay double costs as per Order dated 18 August 1994 by said court that also affirmed the District Court's, (M.D. of Pa.), Order of 18 August 1993 and Memorandum-Order of 23 July 1993; said Order is reprinted in the Appendix hereto, at page App. 2, **infra.**

No opinion was rendered by the Court of Appeals for the Third Circuit; last Judgment ORDER:

"Certified as a true copy and issued in lieu of a formal mandate on September 22, 1994." of the "JUDGEMENT ORDER," herein.

Also to review motions denied to the Petitioners by said Third Circuit Court of Appeals dated 18 August 1994 **'Motion by Appellant For Summary Action:** Mansmann C.J.; reprinted in the Appendix on page App. 6, **infra.** and another **'Motion by Appellant Reconsideration clerks Order 12/23/93** along with **Motion by Appellant to Reverse clerk's Order 12/29/93'** as denied January 14, 1994, Becker C.J. reprinted in Appendix on page App. 5, **infra.**

In the United States District Court for the Middle District of

Pennsylvania; last ORDER was dated August 18, 1993. Case No. CV-93-512 (Caldwell, J.), and is reprinted in the Appendix hereto, at page App. 7, 8, 9; **infra.** Said Court issued a prior "MEMORANDUM ORDER" dated July 23, 1993. Case No. CV-93-512 (Caldwell, J.), and is reprinted in the Appendix hereto, at page App. 10, 11, 12 & 13; **infra.**

## JURISDICTION

The **Order Denying 'Sur Petition For Rehearing'** of the United States Court of Appeals for the Third Circuit although not dated was rendered on September 14, 1994, and this Petition for Writ of Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C., Section 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourth Amendment:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

United States Constitution, Fifth Amendment:

"Nor be deprived Life, Liberty, or Property without due process of law."

United States Constitution, Ninth Amendment:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

United States Constitution, Fourteenth Amendment:

"No State Shall make or enforce any law which shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of Life, Liberty or Property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws."

Bill of Rights:

"Rights to Privacy as stated within the 'penumbra' of Specific Guarantees."

National Environmental Policy Act (NEPA)

"Environmental Impact Statement (EIS)", 42 U.S.C. Sections 4321-4370(b) et seq.

Federal Rules of Civil Procedure:

"Fraud Upon the Court", F.R.C.P. Rule 60 (b)

Federal Rules of Appellate Procedure:

"Reply to Response not provided for", F.R.A.P. Rule 28(c).

## STATEMENT OF THE CASE

Petitioners invoked jurisdiction of the U.S. District Court, Middle District of Pennsylvania, on the grounds that by altering the normal watershed of the Tinklepaugh Channel the Respondents are placing the Petitioners in an **'inherent danger'** and depriving them of their **'right to be secure'** in their persons, houses, papers and effects. (Fourth Amendment U.S. Constitution).

The Citizens of the Tinklepaugh Channel have always been **'secure in their persons, houses, papers, and effects'**, for over 75 to 100 years, as long as anyone can remember! In this time frame, there has been **nill** periodic flooding with no property damage. The minuscule channel has a **very small capacity**, is about 3,400 feet long or about 5 blocks, has little velocity, and a drainage area of under 200 acres. The channel in Peckville's uptown area has been stable!

The Eynon Creek with a drainage area of a little over 800 acres has been seperate from the Tinklepaugh Channel for over 50 to 75 years, as long as can be remembered and also has **no known** history of flooding or property damage.

The Respondents have decided to alter the long-standing watershed by now dumping the Eynon Creek into the Tinklepaugh Channel under the guise of **'Flood Control'** resulting in about an increase of 500% the normal Tinklepaugh Channel drainage area. **(See Map Exhibit 'A').**

A river in volume will now flow in the Tinklepaugh Channel and all storms over a one hundred year frequency **will not** be contained in the 13 ft. x 8 ft. proposed concrete channel. The present Union Street Tinklepaugh channel is only 5 ft. x 1 ft. **(See Exhibit 'B').** This will result in a 2100% increase in flood waters above the normal in the past resulting in a **'catastrophic flood'** to the Tinklepaugh Residents! **(See Photo).**

No longer will the Petitioners **feel secure** or **be secure in their persons, houses, papers and effects.** It is this constitutional **'right of security'** under the Fourth Amendment that **will be deprived** to the Citizens along the Tinklepaugh Channel **forever!**

At any point in time storms greater than a one-hundred year frequency can happen only now the Petitioners will be flooded **instead of being secure** in their persons, houses, papers, and effects, as is constitutionally guaranteed the Petitioners under a **perspective of protection** of the Fourth Amendment of the Constitution of the United States and the Rights of Privacy in the **'penumbra'** of **specific guarantees** of the Bill of Rights.

This **'inherent danger'**, like a **loaded gun** can go off at any point in time, is being **'Newly'** created by the Respondents and was heretofore nonexistent depriving the Petitioners of **their right to be secure 'forever'!**

No one has ever disclosed the change in the watershed as is proposed to any of the Tinklepaugh Residents and how said altering now places them at **greater risk and danger** during flooding of storms with a frequency of greater than one hundred years and that **no Environmental Impact Statement was obtained.**

This tremendous increase in newly created storm water is being dumped into the Tinklepaugh Channel in a reckless manner with little or no regard for the **potential catastrophe** that will **inevitably** flood uptown Peckville without any substantial risk to either the Respondents or the Residents of the Eynon Creek. This massive diversion of **'newly'** created storm water heretofore not known to the longstanding residents of the Tinklepaugh Channel places said residents in an **'inherent danger'**, meaning at any point in time it can present itself and will henceforth **always be!**

The Eynon Creek drainage (800 Acres) can be diverted directly into the Lackawanna River, above Peckville and eliminate this entire controversy. To date the Courts have failed to honor the Petitioners' **'right to be secure in their persons, houses, papers and effects'** under a **perspective of protection** of the Fourth Amendment of the Constitution of the United States.

## ARGUMENT

There are two simple constitutional issues to be decided by the Supreme Court of the United States. They are as follows:

1) "The right . . . . **of Due Process of Law** . . . .", the constitutional right to appeal the decision of the lower court to the next higher court free **from court imposed sanctions.** (penalty requiring appellant to pay double costs to Respondents) Fourth, Fifth, Ninth and Fourteenth Amendments of the U.S. Constitution (emphasis added)

As unconstitutional as it seems, the Petitioner has had sanctions placed upon him to pay double costs to the Respondents, some of which were **nonappearing** in the district court!

2) "The right of the people . . . . **to be secure** in their persons, houses, papers, and effects, . . ., against **unreasonable** . . . . **seizures**, shall not be violated . . . .";
from an **inherent danger** newly created by government, heretofore nonexistent, as it is **not reasonable** to divert a river in volume into a minuscule channel knowing that inevitably this inherent danger will create a flood catastrophe that would otherwise never **ever** have happened, (absent an EIS).
Fourth Amendment of the U.S. Constitution (emphasis added)

The Petitioners herein find themselves confronted with a situation that **compels** them to question in Court the government's alleged right to place them in **'inherent danger'** of the inevitable catastrophic flood that heretofore never **ever** could have presented itself that now places them in a position of **greater risk and danger unnecessarily?** (inherent danger)

The Petitioners claim that the government has **no right** under any circumstance to do so and claim their **"right to be secure** in their persons, houses, papers and effects . . ." under a

**perspective of protection** of the Fourth Amendment of the U.S. Constituton.

The United States District Court for the Middle District of Pennsylvania has failed to invoke Jurisdiction, because the Court itself suppressed the perspective of Fourth Amendment protection of the U.S. Constitution contrary to the relief sought by the Petitioners herein, (supra);

> "That the Court give the Citizens of the Tinklepaugh Creek **all** of their Inherent Powers and Rights . . . as are enumerated in the **Fourth**, Fifth, Ninth and Fourteenth Amendments of the U.S. Constitution". cite: Addendum to Complaint 19 Apr 93; Docket Entry 2, 24a (emphasis added)

It should be noted that both the Appellate and District Courts were indifferent to the granting of relief under the perspective of protection of the Fourth Amendment and the full measure of all other rights despite the **'inherent danger'** to the Petitioners!

Additionally! said Courts attempted to usurp the Petitioners **right to appeal** under the 'Due Process of Law' clause of the U.S. Constitution, First by:

> "5. It is certified that any appeal from this order is frivolous, is not taken in good faith, and is lacking in probable cause."
> Dist. Ct. (M.D. PA.), Order 18 Aug. 1993, p.4, par 5

and Second by:

> ". . . ., it is hereby ORDERED that the appellant shall pay double costs on this appeal."
> 3rd Ct. Court of Appeals, Order 22 Sept 94 p. 2, last paragraph

The Petitioners put the District Court on notice of the lack of the government's failure to have an **Environmental Impact Statement** as follows:

> "28 . . . they have now endangered the health, property, safety and general welfare of the entire uptown community and place their homes at greater risk and danger as a means in which to accomplish their ends. **All this has been accomplished without an Environmental Impact Statement.**" (emphasis added)
> Complaint, 8 Apr 93, p. 9 14a, para 28.

and requested relief as follows:

> "9) **That the Court Order than an Environmental Impact Statement be prepared** . . . . for the Tinklepaugh Creek drainage Basin at the expense of the Defendants." (emphasis added)
> Complaint, 8 Apr 93, p.11 16a, Wherefore: para 9).

The Environmental Impact Statement (EIS) is a creation of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4370 (b). As far as is known by the Petitioners this is **Federal Law**, yet the District Court Judge states:

> "1. All Defendants except the Lackawanna County Sheriff's Office are **dismissed for lack of subject matter jurisdiction.**" (emphasis added)
> Dist Ct. (M.D. PA.) Order 23 July 93, p.1 33a, para 1

and:

> "1. Plaintiff now suggests that his pleadings raise issues under 42 U.S.C. §§ 1983, 1985, and 1986. As we previously indicated, these statutes serve only as vehicles for lawsuits to vindicate **other constitutional** or **statutory rights**. Plaintiff has **failed to indicate** any **federal law** or **constitutional provision** that might be **implicated.**" (emphasis added)
> Dist Ct. (M.D. PA.) Order 18 Aug 93, p. 3 3a footnote 1.

and further:

> "On August 10, 1993, Plaintiff filed a motion for sum-

mary judgment and an accompanying brief. As we have determined that we may not exercise **subject matter jurisdiction** over this case, we will dismiss the motion as moot.
AND NOW, this 18th day of August, 1993, it is ordered that: 1. The complaint is dismissed for **lack of subject matter jurisdiction."** (emphasis added)
Dist Ct. (M.D. PA.) Order 18 Aug 93, p 3 3a & 4 4a, last para and item 1. Order

It should be noted that both the Appellate and District Courts were indifferent to the granting of relief under **Federal Question and subject matter jurisdiction** to the Petitioners?

Because of the hereinabove foregoing reasons, the case has probable cause and is not frivolous and does not lack **subject matter jurisdiction.**

It is significant and material to note that Respondents made no effort to oppose the material facts in the Complaint and Addendums or facts asserted in the other documents filed in the District Court. None of the defendants addressed or refuted any of those facts. They are therefore deemed admitted . The pleadings showed that there was no genuine issue to any material fact and that the Petitioners were entitled to a judgment as a matter of law.

Once again, both the Appellate and District Courts denied the Motion for summary Judgment as follows:

> " AND NOW, this 18th day of August, 1993, it is ordered that:
>
> 3. The motion for summary judgment is denied."
> Dist Ct. (M.D. PA.) Order 18 Aug 93, p 4 4a, Order para 3

and:

> " Motion by Appellant for Summary Action. The foregoing motion is denied."
> 3rd Ct. Court of Appeals, Order 18 Aug 94 by

Mansmann C.J.

However! nonappearing Federal Respondents at the appellate level attempted to argue the case they chose not to litigate in the district court setting a very bad precedent by the inclusion of documents' into the record **not** previously filed in the district court record. Petitioners made a motion to strike the documents but were **denied,** even after reconsideration as follows:

> " 1 . . . . Motion to Review the Clerk's order 12/23/93 Order.", and
> 2 . . . Motion to Reverse clerk's order 12/29/93 . ."
> 3rd Ct. Court of Appeals, Order 14 Jan 94 by Becker C.J. **"Motions are denied".**

The Appellate Court denied the Petitioners' a **'fundamental'** precedent of **'Due Process and Equal Protection of the Law'** as is secured by the Fifth and Fourteenth Amendments of the U.S. Constitution. This entire progression of constitutional deprivation seems to run rampant in this case. The foregoing has been nothing but a litany of constitutional errors as subjugated by the courts.

The entire contents of all the Petitioners' pleadings are replete invocations and supplications emphasizing the enormity of the specific material **Fourth Amendment** and **Federal law violations** of the Petitioners.

No longer will the Petitioners **be secure** or **feel secure** in their persons, houses, papers and effects. It is this constitutional quest for the **'right of security'** under the **Fourth Amendment** and the Rights of Privacy in the **'penumbra'** of specific guarantees in the Bill of Rights that will be deprived to the Petitioners **'forever'.**

In the face of an **'inherent danger'** what else can the Petitioners do to **illuminate** the courts of the **justness** of their cause and the merits of their case. There are no sanctions great enough to bar the Petitioners from trying to secure their **'right**

**Foot Note ' – Reply to response not provided for F.R.A.P. Rule 28(c), to Petitioners.**

to **be secure'** in their person, houses, papers, and effects from a catastrophic flood heretofore nonexistent in their area of abode. And to have sanctions placed upon them to pay double costs to the Respondents is **'outrageous'.**[3]

**Foot Note [3] – Respondents Have Unclean Hands (see Pages 4 And App. 4); F.R.C.P. Rule 60(b) "Fraud[s] Upon The Court".**

## SUMMARY

In light of the pending **'inherent danger'**, Citizens such as the Petitioner, a registered **professional Civil Engineer**, would be **remise** in not taking every effort to overt an inevitable flood catastrophe and it is therefore the **duty of the Supreme Court** of the United States to immediately remove any built-in **coercement** or other **intimidation mechanisms** that presently exist in the court system whose **'sole'** function it is to **impede** and **prevent;** in a perverted manner so as to shame the so-called sacred halls of justice; Citizens from securing their **legitimate rights and privileges** under the Constitution of the United States impairing them with a **'chilling affect'** that scars their memory forever! To **deny** and **discourage** rather than **grant** and **encourage** by placing sanctions of double costs to the Respondents, (the creators of this mess), is just **appalling!**

It is also the duty of the Supreme Court of the United States, **a constitutional court**, to secure the Petitioners and the Citizens **"right to be secure in their persons, houses, papers, and effects . . ."** (Fourth Amendment of the U.S. Constitution), from a **perspective of protection** under the **Fourth Amendment** of the U.S. Constitution appropriate to the circumstances as created by government that has placed the Petitioners and other Citizens in **'inherent danger'**, WHEREIN HERETOFORE said **'inherent danger'** was **nonexistent** and would never **ever** have presented itself; as there is **no bar** preventing the Supreme Court of the United States from doing so!

## THE REASONS FOR GRANTING THE WRIT

1) The Petitioners have a basic right . . . **of Due Process and Equal Protection of the Law** . . . to appeal the decision of a lower court to the next higher court free from court imposed sanctions requiring the Petitioner to pay double costs to the Respondents.
**violative** of the Fourth, Fifth, Ninth and Fourteenth Amendments of the U.S. Constitution.

2) The Petitioners have a basic right . . . **to be secure** in their persons, houses, papers, and effects, . . . against **unreasonable** . . . . seizures, shall not be violated . . . from an **'inherent danger'** newly created by government as it is **not reasonable** to divert a river in volume knowing that inevitably a catastrophic flood will be created heretofore **nonexistent or possible.**
**violative** of the Rights of Privacy of the **'penumbra'** of **'specific guarantees'** of the Bill of Rights and a **perspective of protection** of the Fourth Amendment of U.S. Constitution.

## CONCLUSION

In the instant case, the Court of **First Jurisdiction** was attempting to become the Court of **Final** Jurisdiction by **usurpation** of the Petitioners' constitutional right of **'Due Process and Equal Protection of the Law'** and his **'right to appeal'** the decision of a lower Court to the next higher Court.

The Courts should have **no authority** to sanction a litigent who is trying to secure his **legitimate rights and privileges** under the Constitution of the United States by **'denying'** and **'disparaging'** their rights with a type of **built-in systematic Court conspiracy** that penalizes and frustrates the Petitioners constitutional endeavor, especially in a **free society** such as ours. The Supreme Court of the United States has a **legal duty** as **high protectorate** of the Constitution of the United States to remove any **mechanisms** of **coercement and intimidation,** such as exposed itself like the tip of an iceberg in the instant case, from the entire Court System under their jurisdiction, immediately, forthwith, without delay for this issue **alone** is of **'vast public import'**, as **'a nation can be no greater or lessor than its ' Courts'!**

The Government has **no authority** to place either the Citizens or the Petitioners in an **'inherent danger',** involuntarily against their consent or will in the absence of a crime, war or

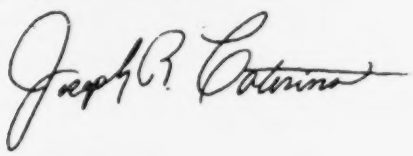
a national emergency none of which are present in this scenario; and the Citizens have a basic constitutional **'Right'** . . . . **to be secure** in their persons, houses, papers, and effects . . from an **'inherent danger'** created by government heretofore that was **non-existent** nor would have **ever** presented itself, but for and by the intervention of government!

Should the Supreme Court of the United States grant this **Petition For Writ of Certiorari**, then as Abraham Lincoln so simply stated, **"to sin by silence when they should protest makes cowards of men"**, even if such persons are justices of the highest court in the land; will not be true.

Finally, "It is **not** the function of our Government to keep the citizens from falling into error; it **is** the function of the citizen to keep the government from falling into error." (**American Communications Association v. Douds,** U.S. Sup Ct., 339 U.S. 382, 442)

I thank the Court and their Staff for any consideration that **can be given** to my constitutional plight and I apologize that I was unable to restrict my argument to two pages as intended for I lack the professional skills necessary to do so.

Respectfully submitted,



Joseph R. Caterina, et al
and all others similarly situated
202 Kenyon Drive, Peckville, PA 18452
Phone (717) 489-8741 home
489-6883office
348-5167pager

P.S. Note to Court:
Should the Court grant the Petition For Writ of Certiorari to

the United States Court of Appeals for the Third Circuit the Petitioners herein will be represented by:

DAVID L. KURTS, ESQ., Attorney-at-Law
Offices: P.O. Box 107 F, R.D. 4, Lake Ariel, PA 18436
(717) 689-9840
ATTY. I.D. #16289

Attorney David L. KURTS is a member of the Bar and has presented oral argument in the United States Supreme Court on other past cases. (Pro Hac Vice)

Date: December 12, 1994

**Notice to the Court:**
**FOR INFORMATION ONLY:**

A whole class of citizens, (fifty of which are property owners adjacent to the Tinklepaugh Channel), and hundreds of other residents and property owners between the present Tinklepaugh Channel and approximate Main Street Area have no notice or knowledge of this litigation that will directly affect them.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 93-7565

JOSEPH R. CATERINA, and all those similarly situated

v.

BLAKELY BOROUGH; ARCHBALD BOROUGH; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY, LACKAWANNA COUNTY; DEPARTMENT OF ENVIRONMENTAL RESOURCES; DEPARTMENT OF GENERAL SERVICES OF PA; GENERAL STATE AUTHORITY OF PA; LACKAWANNA COUNTY SHERIFF'S OFFICE; UNITED STATES ARMY CORPS OF ENGINEERS; U.S. DEPARTMENT OF INTERIOR; CECO ASSOCIATES, INC., a corporation of PA; PA DEPARTMENT OF TRANSPORTATION; THE LAW FIRM OF FOLEY, FOLEY, COGNETTI AND COWLEY; JOHN ORMASA; JOSEPH M. MCDADE; HILLS OF ARCHBALD, INC., A corporation of PA; EDWARD J. GHILARDI; LEO ZINI, Unknown Owners, 528-526 Short Ave., Peckville; MARK ZINI, Unknown Owners, 528-526 Short Ave., Peckville; THE LAW FIRM OF FOLEY, MCLANE, NEALON FOLEY & MCDONALD; U.S. DEPARTMENT OF SURFACE MINING IN N.E. PA; UNKNOWN OWNER, 528-526 SHORT AVE., PECKVILLE

JOSEPH R. CATERINA, and all others similarly situated,

**Appellant**

Appeals from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civ. No. 93-00512)
District Judge: Honorable William W. Caldwell

Submitted Under Third Circuit LAR 34.1(a)
July 29, 1994
Before: MANSMANN, HUTCHINSON
and LEWIS, **Circuit Judges.**

## JUDGEMENT ORDER

After consideration of all contentions raised by the appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Pursuant to Fed. R. App. P. 38, it is hereby ORDERED that the appellant shall pay double costs on this appeal.

BY THE COURT,
CAROL LOIS MANSMANN, Circuit Judge

Attest:
BRADFORD A. BALDUS,
Chief Deputy Clerk
Dated: August 18, 1994

Double Costs taxed in favor of Departments of General Services, Environmental Resource & Transportation & General State Auth. as follows:

| | |
|---|---|
| Total for Brief ..... | $355.20 |
| Total ..... | $355.20 |

Double Costs taxed in favor of Blakely Borough, et al. as follows:

| | |
|---|---|
| Total for Brief ..... | $171.50 |
| Total ..... | $171.50 |

Double Costs taxed in favor of Lackawanna County Redevelopment Authority, Lackawanna County and Sheriff's Office, Foley, McLane, Nealon, Foley & McDonald, P.C. as follows:

| | |
|---|---|
| Total for Brief ..... | $262.40 |
| Total ..... | $262.40 |

Double Costs taxed in favor of Hills of Archbald, Inc. and Leo and Marc Zini as follows:

| | |
|---|---|
| Total for Brief ..... | $348.80 |
| Total ..... | $348.80 |

Certified as a true copy and issued in lieu
of a formal mandate on September 22, 1994.
Teste: P. DOUGLAS SINK
Clerk, U.S. Court of Appeals for the Third Circuit.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 93-7565

JOSEPH R. CATERINA, etc.
vs.
BLAKELY BOROUGH; et al.

---

SUR PETITION FOR REHEARING

Present: SOLIVITER, **Chief Judge,**
BECKER, STAPLETON, MANSMANN, GREENBERG,
HUTCHINSON, SCIRICA, COWEN, NYGAARD, ALITO,
ROTH, LEWIS and MCKEE, **Circuit Judges.**

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT,
CAROL LOIS MANSMANN
Circuit Judge

(September 14, 1994)
'No Date On order'

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 93-7565

JOSEPH R. CATERINA
v.
BLAKELY BOROUGH, et al.
JOSEPH R. CATERINA, Appellant
(M.D. (Harrisburg) of Pa. Civil No. 93-00512 (WWC) )

Present: MANSMANN, HUTCHINSON and LEWIS,
**CIRCUIT JUDGES**

Notice by Appellant to the United States Court of Appeals of Additional Fraud.

ANTHONY INFANTE, 597-3137
Deputy Clerk

Listed for Disposition: 7/29/94

**ORDER**

The foregoing "Notice" shall be filed by the clerk for the information of the court.

By the Court,
CAROL LOIS MANSMANN,
**Circuit Judge**

Dated: August 18, 1994

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 93-7565

JOSEPH R. CATERINA
v.
BLAKELY BOROUGH, et al.
JOSEPH R. CATERINA, Appellant
(M.D. (Harrisburg) of Pa. Civil No. 93-00512 (WWC) )

Present: BECKER, **Circuit Judge.**

1. Motion by Appellant Pro Se entitled "Plaintiffs' Motion to the Court for Reconsideration of the Clerk's Order. Dated 12/23/93", which the Court may wish to treat as a Motion to Review the Clerk's 12/23/93 Order.

2. Motion by Appellant Pro Se entitled "Plaintiffs' Motion to the Court to Reverse Clerk's Order, dated 12/29/93", which the Court may wish to treat as a Motion to Review the Clerk's 12/29/93 Order.

For the Court's information, the above mentioned orders and all associated documents and the docket entries are attached.

ANTHONY INFANTE 597-3137
Deputy Clerk

Case Fully Briefed.

**ORDER**

The foregoing motions are denied.

By the Court,
JAMES R. BECKER,
**Circuit Judge**

Dated: January 14, 1994

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 93-7565

JOSEPH R. CATERINA
v.
BLAKELY BOROUGH, et al.
JOSEPH R. CATERINA, Appellant
(M.D. (Harrisburg) of Pa. Civil No. 93-00512 (WWC) )

Present: MANSMANN, HUTCHINSON and LEWIS,
**CIRCUIT JUDGES**

Motion by Appellant for Summary Action.

ANTHONY INFANTE 597-3137
Deputy Clerk

Listed for Disposition: 7/29/94

**ORDER**

The foregoing motion is denied.

By the Court,
CAROL LOIS MANSMANN
**Circuit Judge**

Dated: August 18, 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

| | |
|---|---|
| JOSEPH R. CATERINA, and all others similarly situated, Plaintiff<br><br>vs.<br><br>BLAKELY BOROUGH, et al., Defendants | CIVIL ACTION NO. 3: CV-93-512 |

**ORDER**

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS

We are considering Plaintiff's response to our order to show cause why his complaint against the Lackawanna County, Pennsylvania, Sheriff's office should not be dismissed for lack of subject matter jurisdiction, Plaintiff's motion for summary judgment, and Plaintiff's motion for reconsideration.

Plaintiff has filed a thorough description of the events of which he complains. Apparently, a representative of the Sheriff's office came to Plaintiff's business on the afternoon of March 6, 1993, to serve Plaintiff with papers having to do with property condemnation. Plaintiff alleges that the server "burst" into the office, "bang[ed] a heavy object on the front office desk." Plaintiff asserts that the man shouted repeatedly, asking where he could find Joseph Caterina. Plaintiff identified himself and produced a pre-addressed mailing envelope with which he intended to immediately send back the service papers. When Plaintiff informed the Sheriff's representative of his intention to mail back the papers, the man opened the envelope and looked through the papers. Plaintiff asserts that the man then took several of the papers and left, loudly repeating, "I don't care." Plaintiff, meanwhile, sealed the remainder of the papers in his pre-addressed envelope and deposited it in a mailbox. Plaintiff complains that there was a potential client speaking with him at the time of the "visit" and that she left immediately afterward and has not returned. He further notes that several of his neigh-

bors watched the confrontation from their porches.

From these events, Plaintiff argues the Sheriff's office violated his rights under the Fourth Amendment to the United States Constitution. We disagree.

> **"The Fourth Amendment holds as follows: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ."**

The United States Supreme Court has indicated that **Fourth Amendment protection extends to places in which a citizen has a reasonable expectation of privacy. Katz v. United States, 389 U.S. 347, 88 S. Ct. 507, 19 L.Ed.2d 576 (1967).** Plaintiff here claims that an officer entered his place of business which, given Plaintiff's description, is a place open for prospective clients. We do not find that the entrance into Plaintiff's business of a representative of the Sheriff's office amounts to a Fourth Amendment violation given that Plaintiff enjoyed no reasonable expectation of privacy there. We realize that Plaintiff complains not merely about the entry but about the conduct of the man; nevertheless, the Fourth Amendment is not addressed to such a concern.

The other allegation Plaintiff offers is that the man opened an envelope addressed to Plaintiff and looked at the papers therein. Again, there is no Fourth Amendment implication here. Plaintiff had clearly refused to accept the papers and had indicated that he would mail them back to the sender immediately. **The Fourth Amendment protects the rights of citizens "to be secure in their persons, houses, papers, and effects;"** the papers were never the property of Plaintiff as he clearly refused to accept them. Even if they were Plaintiff's property, we would conclude that the opening of the envelope under the circumstances did not amount to a constitutional violation.

Thus, we conclude that the complaint does not implicate a **federal right** and that, therefore, **we do not have subject matter jurisdiction.**[1]

On August 10, 1993, Plaintiff filed a motion for summary

judgment and an accompanying brief. As we have determined that we may not exercise **subject matter jurisdiction** over this case. we will dismiss the motion as moot.

[1] Plaintiff now suggests that his pleadings raise issues under 42 U.S.C. §§ 1983, 1985, and 1986. As we previously indicated, these statues **serve only as vehicles for lawsuits to vindicate other constitutional or statutory rights.** Plaintiff has failed to indicate **any** federal law or **constitutional** provision that **might be "implicated."**

AND NOW, this 18th day of August, 1993, it is ordered that:

1. The complaint is dismissed for lack of subject matter jurisdiction.
2. The Motion to Make Complaint Conform to Plaintiff's Pleadings is dismissed as moot.
3. The motion for summary judgment is denied.
4. The motion for reconsideration is denied.
5. It is certified that any appeal from this order is frivolous, is not taken in good faith, and is lacking in probable cause.
6. The clerk of Court shall close this file.

WILLIAM W. CALDWELL
**United States District Judge**

LANCE S. WILSON,
Deputy Clerk

Dated: August 18, 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

| | |
|---|---|
| JOSEPH R. CATERINA, and all others similarly situated, Plaintiff<br>vs.<br>BLAKELY BOROUGH, et al., Defendants | CIVIL ACTION NO. 3: CV-93-512 |

**MEMORANDUM**

Pending are eight motions to dismiss filed by various Defendants. They are now ripe for disposition.

**I. Facts**

This lawsuit arises from a flood control plan developed by the Pennsylvania Department of Environmental Resources for Blakely Borough, Pennsylvania. Part of the plan calls for the Commonwealth to acquire land by eminent domain. 26 Pa. Cons. Stat. §§ 1-101, **et seq.** (Purdon 1958 and supp. 1993). Plaintiff is a landowner along the Tinklepaugh Creek whose property has been condemned in order to construct portions of the flood control project. He proceeds **pro se** and alleges improprieties by some twenty defendants, who include two boroughs; Lackawanna County, Pennsylvania, and its Redevelopment Authority and sheriff's office; four agencies of the Commonwealth of Pennsylvania; the United States Army Corps of Engineers and the United States Department of the Interior; the Hon. Joseph M. McDade of the United States House of Representatives and a member of his staff; a local mining company; an engineering firm that has apparently consulted on the flood control plan; and the president of the Blakely Borough Council.

The eight pending motions to dismiss are predicated on Fed. R. Civ. P. 12(b) (1) and 12(b) (6).

## II. Law and Discussion

United States district courts have limited jurisdiction, being confined generally to cases arising under the laws or Constitution of the United States, 28 U.S.C. § 1331, or that arise under state law where there is diversity of citizenship among the litigants. 28 U.S.C. § 1332. Because of this limited jurisdiction, a district court has a well-established duty to insure that it acts only when it has jurisdiction over the subject matter. **Employers Insurance of Wausau v. Crown Cork & Seal Co.**, 905 F.2d 42, 45 (3d cir. 1990).

Diversity of citizenship is governed by 28 U.S.C. § 1332 and requires "complete diversity." **Strawbridge v. Curtiss**, 7 U.S. 267 ( (1806). This means that no defendant can be a citizen of the same state as any plaintiff. **Id.** Plaintiff in the instant case does not deny that certain of the Defendants are, as he is, citizens of Pennsylvania. Rather, he points to those Defendants who are not, apparently presuming that diversity is satisfied so who are not, apparently presuming that diversity is satisfied so long as at least one of the Defendants is not a Pennsylvania citizen. As noted, this is not the case and there is no diversity here.

The second possible source for federal jurisdiction is our federal question jurisdiction, in which the case or controversy arises from the laws of Constitution of the United States. 28 U.S.C. § 1331.

We have carefully reviewed Plaintiff's complaint and the two addenda to it. We find only two references that could arguably implicate federal questions. We will discuss them in turn.

In the third paragraph, Plaintiff refers to a "taking" of property and asserts that

> [c] itizens are not being compensated for the increased risk and probability of flooding with a storm frequency of greater than a 100 year storm that will inevitably present itself . . .

It is true that private property may not be taken for public use without just compensation. U.S. Const. amend. V. We perceive Plaintiff as alleging two sorts of taking, one of his property by eminent domain and one of his neighbors' property by

eventual flooding should the proposed plan have an adverse effect.[1]

Plaintiff has not asserted an unconstitutional taking regarding the eminent domain proceedings against his property. The Fifth Amendment only prohibits taking without just compensation. The Pennsylvania eminent domain law requires compensation. 26 Pa. Cons. Stat. § 1-407 (Purdon 1958 and supp. 1993). Plaintiff has not alleged that the condemning authorities have failed to offer him compensation or that such compensation is unjust.

The second takings claim regards the potential for flooding. We note, first, that such a suggestion is purely speculative. Second, periodic flooding of property does not state a claim under the Takings Clause of the Fifth Amendment. Cox v. Tennessee Valley Authority, No. 92-5641, 1993 U.S. App. LEXIS 5875 at *11 (3d Cir. March 15, 1993). Plaintiff has not suggested that the danger he alleges is that private property would be permanently submerged. Id. Hence, we do not find that there is a federal question concerning the Fifth Amendment.

The other implication of federal constitutional rights is in paragraph 26, in which Plaintiff charges that a representative of the Lackawanna County sheriff's Office conducted an unreasonable seach and seizure of his property, in violation of the Fourth Amendment. Plaintiff does not, however, more fully explain this allegation. If the visit to Plaintiff's residence was merely to deliver a summons or condemnation notice, we perceive no search or seizure. However, we believe this accusation is in need of further explanation before we assume it to be meritless.

In conclusion, with the exception of the Fourth Amendment charge against the Lackawanna County Sheriff's Office, we believe it is clear that we may not exercise jurisdiction over this case. We will, therefore, dismiss all Defendants except the Sheriff's Office and we will require Plaintiff to show cause within 20 days why we should not dismiss the Sheriff's Office for lack of subject matter jurisdiction.

WILLIAM W. CALDWELL
**United States District Judge**

Date: July 23, 1993

[1] It should be noted that Plaintiff includes as co-plaintiffs "all other similarly situated" although he does not name them. We presume that he means his neighbors and others who live along the creek.

[2] Because we have questioned the issue of subject matter jurisdiction sua sponte, we will not delve into which specific Defendants have filed motions for dismissal.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

| | |
|---|---|
| JOSEPH R. CATERINA, and all others similarly situated, Plaintiff<br>vs.<br>BLAKELY BOROUGH, et al., Defendants | CIVIL ACTION NO. 3: CV-93-512 |

**ORDER**

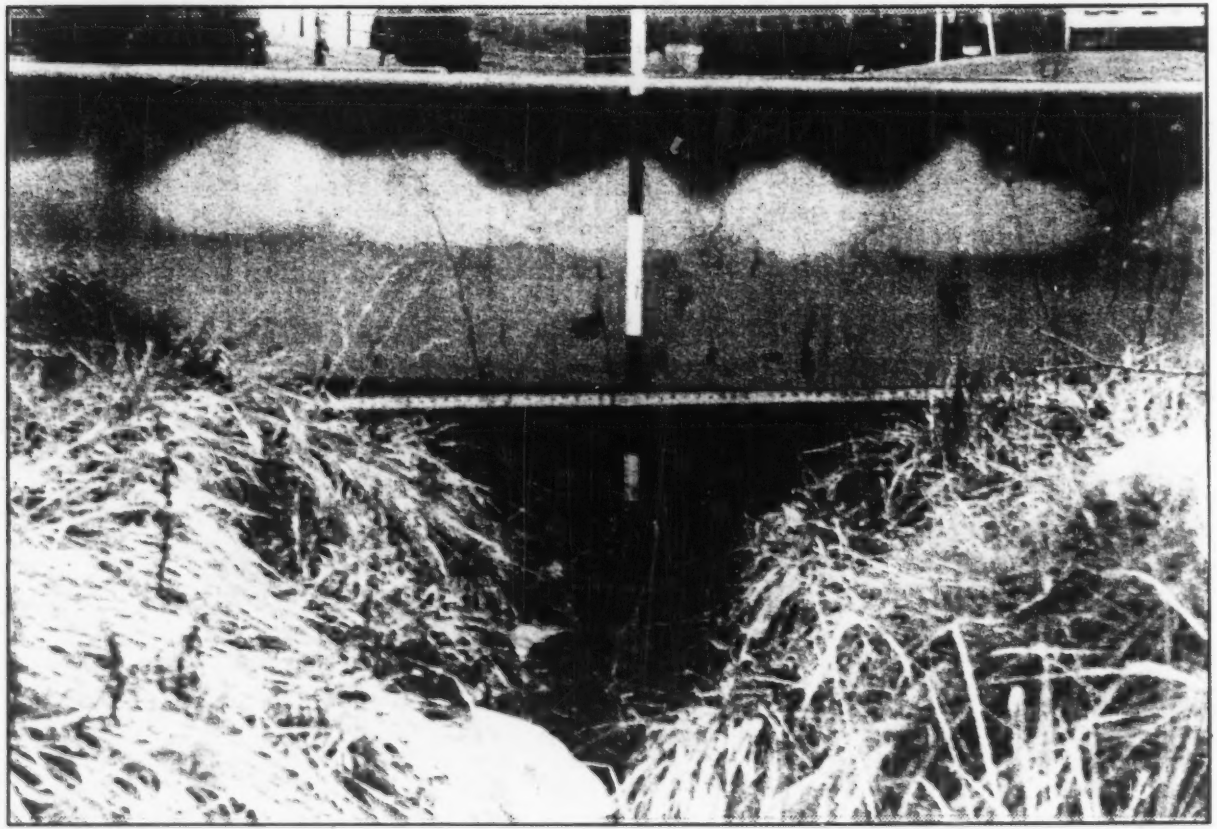
AND NOW, this 23rd day of July, 1993, it is ordered that:

1. All Defendants except the Lackawanna County Sheriff's Office are dismissed for lack of subject matter jurisdiction.
2. Plaintiff shall show cause on or before August 9, 1993, why the complaint should not be dismissed as against the Lackawanna County Sheriff's Office for lack of subject matter jurisdiction.
3. The motion of defendant McDade to amend the summons is dismissed as moot.

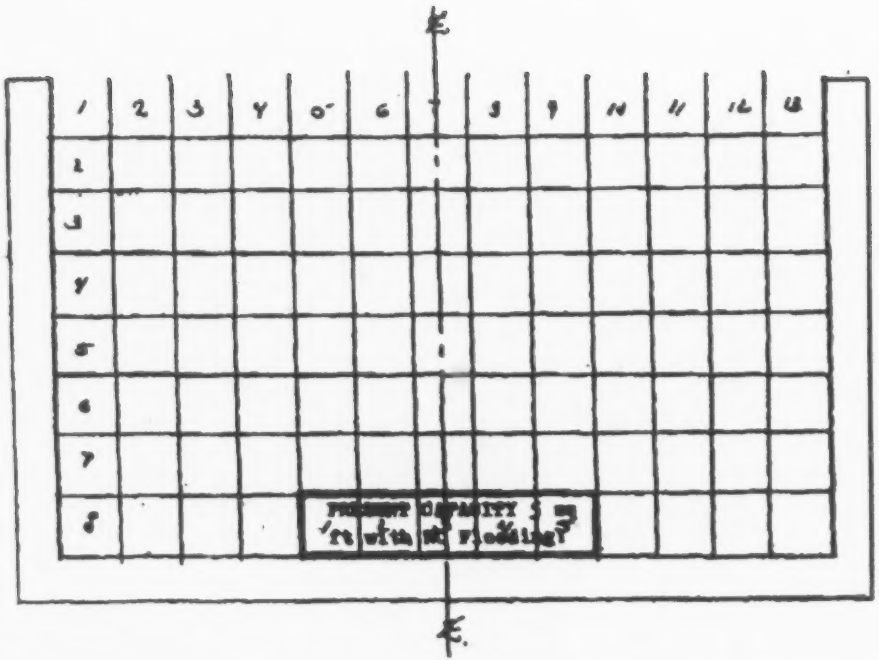
WILLIAM W. CALDWELL
**United States District Judge**

LANCE S. WILSON
Clerk

Date: July 23, 1993



PRESENT TINKLEPAUGH CHANNEL AT UNION STREET
**5 feet wide x 1 foot deep**
(the capacity less than 5 sq. ft.)
Sta 34+00 (mile .63)




(App. 15)

STA 34+00 **PRESENT** UNION STREET CAPACITY **(5 sq. ft.)** .63 Mile Point

AS COMPARED TO

PROPOSED 13ft. x 8 ft. CHANNEL (104 sq. ft.)

NEW CAPACITY **2100% increase**

**TWENTY-ONE TIMES MORE FLOOD WATER TO PROTECT A STREAM THAT HAS NO HISTORY OF FLOODING**

# EXHIBIT 'B'

**EXHIBIT 'A' MAP**
**ATTACHED TO THIS PAGE**

**EXPLANATION:**

This map shows the normal longstanding Tinklepaugh Watershed as has been known by the residents for their entire life time. (For over 50 to 75 years as long as any living resident can remember) this Watershed has been a drainage basin under 200 acres ±.

The Tinklepaugh Channel is so marked and runs from just **South of Keystone Avenue** and just **North of Union Street** and natural **Ponding Areas 'A' and 'E'** are a part of the long-standing drainage basin.

A class of hundreds of residents and property owners fall within **this 200 acres** who **are not represented** in this case and who will be directly affected by the outcome. (Area between Tinklepaugh Creek and Main Street)

Also shown is the Eynon Creek Drainage Basin, (a little over 800 acres ± Watershed); the Eynon Creek has been seperate from the Tinklepaugh Creek for over 75 years as long as can be remembered. (Natural and man-made ponding **areas 'B', 'C', 'D', 'F', 'G', 'H', 'I', 'J', 'K'** and a **part of 'L'** all fall within this longstanding drainage basin)

This massive diversion of newly created storm water can be diverted directly into the Lackawanna River above Peckville as is so indicated on the **Map Exhibit 'A'** (an 800 foot underground 10'x10' reinforced precast concrete box channel ).

NATURAL PONDING AREAS
LONG STANDING
EYNON CREEK BASIN and
TINKLEPAUGH CHANNEL BASIN

Eynon Creek 800 Acres ±

Prospect Hill 200 Acres ±

Tinklepaugh Creek 200 Acres ±

Eynon Creek

Possible Diversion Directly Into Lackawanna River Above Peckville

Lackawanna River

Peckville

Blakely High Sch

Peckville Sch

Forest Cem

Strip Mine

Sub Station

RIVER

EXHIBIT 'A'

(App. 16)

Supreme Court, U.S.
FILED
FEB 16 1995
OFFICE OF THE CLERK

NO. 94-1231

**THE SUPREME COURT OF THE UNITED STATES**
**October Term, 1994**

JOSEPH R. CATERINA
AND ALL OTHERS SIMILARLY SITUATED, ET AL.,
Petitioners

-against-

BLAKELY BOROUGH, ET AL.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE THIRD CIRCUIT COURT OF APPEALS

# BRIEF IN OPPOSITION ON BEHALF OF DEPARTMENT OF GENERAL SERVICES, DEPARTMENT OF ENVIRONMENTAL RESOURCES, AND DEPARTMENT OF TRANSPORTATION

CATHERINE A. FOLEY
Assistant Counsel
Department of General Services
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Harrisburg, PA 17125
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Attorney for Departments of
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Environmental Resources and
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*(Counsel of Record)*

*(For Additional Counsel, See Reverse of Cover)*

BEST AVAILABLE COPY

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Scranton, PA 18503

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*For Lackawanna County, Lackawanna County Redevelopment Authority, Lackawanna County Sheriff's Office, and Foley, McLane, Nealon, Foley & McDonald:*

Thomas J. Foley, Jr., Esq.
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## COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

1. Whether the district court erroneously dismissed the case for lack of jurisdiction.

2. Whether the imposition of sanctions by the circuit court of appeals is a violation of Petitioner's constitutional rights.

## PARTIES TO THE PROCEEDING

The parties to the proceedings below were the petitioner, Joseph R. Caterina, and the following defendants/appellees (listed as they appeared in the style of the case):

BLAKELY BOROUGH; ARCHBALD BOROUGH, LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; LACKAWANNA COUNTY; DEPARTMENT OF ENVIRONMENTAL RESOURCES OF PA.; DEPARTMENT OF GENERAL SERVICES OF PA.; GENERAL STATE AUTHORITY OF PA.; LACKAWANNA COUNTY SHERIFF'S OFFICE; UNITED STATES ARMY CORPS OF ENGINEERS; U.S. DEPARTMENT OF INTERIOR; CECO ASSOCIATES, INC., a Corporation of PA.; PA. DEPARTMENT OF TRANSPORTATION; THE LAW FIRM OF FOLEY, MCLANE, NEALON, FOLEY & MCDONALD; JOSEPH M. MCDADE; JOHN ORMASA; HILLS OF ARCHBALD, INC., a Corporation of PA.; UNKNOWN OWNER 528-526 SHORT AVE., PECKVILLE, PA.; U.S. DEPARTMENT OF SURFACE MINING IN N.E. PA.; and EDWARD J. GHILARDI; ET AL.

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NO. 94-1231

THE SUPREME COURT OF THE UNITED STATES
October Term, 1994

JOSEPH R. CATERINA
AND ALL OTHERS SIMILARLY SITUATED, ET AL.,
Petitioners

-against-

BLAKELY BOROUGH, et al.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE THIRD CIRCUIT COURT OF APPEALS

# BRIEF IN OPPOSITION ON BEHALF OF DEPARTMENT OF GENERAL SERVICES, DEPARTMENT OF ENVIRONMENTAL RESOURCES, AND DEPARTMENT OF TRANSPORTATION

## OPINIONS BELOW

The Memorandum and the Order of the District Court (Petitioner's Appendix Pages 10 and 7 respectively) have not been reported.

The Judgment Order of the Third Circuit Court of Appeals (Petitioner's Appendix Page 1) is reported at 37 F.3rd 1486 (1994).

## BASIS FOR JURISDICTION

The Memorandum and Order of the United States District Court was dated July 23, 1993. The final Order of that court was dated August 18, 1993.

The Judgment Order of the United States Court of Appeals for the Third Circuit was dated August 18, 1994. The Petition for Rehearing was denied on September 14, 1994.

This Court has jurisdiction to review the judgment of the court of appeals pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

United States Constitution, Amendment V:

> No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

National Environmental Policy Act, 42 U.S.C. 4332:

> The Congress authorizes and directs that ... (2) all agencies of the Federal government shall --
>
> (C) include in every recommendation or report on proposals for ... major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --
>
> > (i) the environmental impact of the proposed action ....

28 U.S.C. § 1331

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.

28 U.S.C. § 1332

> The district courts shall have original jurisdiction of all civil actions where the matter in controversy ... is between --
>
> (1) citizens of different States; ....

Fed. R. App. P. 38

> If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

## COUNTERSTATEMENT OF THE CASE

This suit was instituted in the United States District Court for the Middle District of Pennsylvania by the Petitioner proceeding pro se, complaining of various improprieties in a flood protection project developed by the Pennsylvania Department of Environmental Resources and scheduled to be built by the Pennsylvania Department of General Services in Blakely Borough, Lackawanna County. Some of Petitioner's property in Blakely Borough that was needed to construct the project was acquired by eminent domain instituted by the Borough.

Respondents herein moved to dismiss on the grounds, primarily, of lack of diversity jurisdiction under 28 U.S.C. § 1332 and lack of federal question jurisdiction under 28 U.S.C. § 1331. In its July 23, 1993 Memorandum and Order, the District Court dismissed all Defendants, with the exception of the Lackawanna County Sheriff's Office, for lack of subject matter jurisdiction. After Petitioner supplied the court with addi-

tional information regarding the conduct of Sheriff's Office personnel, on August 18, 1993 the District Court ordered the Complaint dismissed in its entirety for lack of subject matter jurisdiction. In this Order, furthermore, the District Court specifically certified that any appeal would be frivolous, not taken in good faith, and lacking in probable cause.

Petitioner appealed nonetheless. The Court of Appeals for the Third Circuit affirmed the District Court's judgment. Pursuant to Fed. R. App. P. 38, the court additionally ordered Petitioner to pay double costs.

## REASONS FOR DENYING THE WRIT

No amount of rhetoric on Petitioner's part can convert the present case into one that warrants the granting of his petition. First, the district court found, and the court of appeals agreed, that diversity jurisdiction did not lie. The District Court noted in its Memorandum that Petitioner apparently presumed that so long as one party was not a citizen of the state, diversity jurisdiction existed. Petitioner and most of the defendants, however, are citizens of Pennsylvania, and therefore diversity jurisdiction was not present. *Strawbridge v. Curtiss,* 7 U.S. 267 (1806).

Secondly, the district court found, and the court of appeals agreed again, that federal question jurisdiction did not lie either. In two ways, the court addressed the "taking" issue raised by Petitioner in his complaint. The court first pointed out that Petitioner did not assert an unconstitutional taking of his property. The Petitioner never alleged in his complaint that he either was not

offered compensation, in accordance with the Pennsylvania Eminent Domain Code, 26 P.S. 1-101, et seq., or that the compensation offered was not just. (Petitioner's App. Page 12) If a state provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Fifth Amendment's just compensation clause until [he] has used the procedure and been denied just compensation. *Williamson County Regional Planning Com. v. Hamilton Bank of Johnson City,* 473 U.S. 172 (1985). Section 1-407 of the Pennsylvania Eminent Domain Code provides just such a procedure. Petitioner was offered compensation by the Borough. When no response from him was forthcoming, the money was paid into the county court so that possession of the property condemned could be obtained. To the knowledge of Respondents herein, Petitioner has never availed himself of the provisions of § 1-407 to dispute the amount offered and paid into court.

As to the next "taking" issue, the district court found the Petitioner's suggestion that the potential for flooding allegedly to be caused by the flood protection project was purely speculative. The court further determined that periodic flooding does not state a claim under the Fifth Amendment. (Petitioner's App. Page 12). The court's stance was in keeping with unequivocal statements of this Court. In *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 417 (1982), the Court discussed a number of cases involving takings claims for flooding and then concluded that it has consistently distinguished between flooding cases involving a permanent physical occupation and cases involving a more temporary invasion. "A taking has always been found only in the former situation." *Id.* at 428. If any of the conjectured flooding were to take place after this flood protection project is built, the flooding would be of a temporary nature only, and it would, therefore, not qualify as a "taking."

Although not addressed specifically by the district court, in his complaint and again in his Petition (Petitioner's Pet. Page 9) Petitioner alleges the lack of an Environmental Impact Statement (EIS) on the part of the government. The National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 - 4370(b), which requires a statement on the environmental impact of proposed action, by its plain language applies to Federal Government agencies only. 42 U.S.C. § 4332. Because this project does not involve "major Federal actions", an EIS is not required.

On the state level, an environmental assessment on the impact of this project was performed by the Department of Environmental Resources in accordance with 25 Pa. Code §105.15, prior to the issuance of the dam and waterway permits needed for construction of the project by the Department of General Services.

With respect to the double-cost sanctions imposed by the circuit court pursuant to Fed. R. App. P. 38, Petitioner chose to ignore the possibility of sanctions

being imposed as set forth in Fed. R. Civ. P. 11 and Fed. R. App. P 38. Even though acting *pro se*, Petitioner has demonstrated throughout the history of this case that he can read and interpret the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure quite satisfactorily. The district court, moreover, in its August 18 Order put him on notice that any appeal would be frivolous, not taken in good faith, and lacking in probable cause. Finally, respondents herein filed a separate motion for summary action and imposition of sanctions with the circuit court, a copy of which was mailed to Petitioner via first class mail. (Respondents' App. A)

Petitioner's actions were sanctionable according to Fed. R. App. P. 38. Additionally, this Court has recently sustained the "inherent power" of federal courts to impose sanctions for bad-faith conduct. *Chambers v. NASCO, Inc.*, 501 U.S. ____, 111 S.Ct. 2123 (1991). Clearly, the circuit court's imposition of sanctions did not violate Petitioner's constitutional rights.

## CONCLUSION

The Petitioner does not assert that the decision herein is in conflict with the decisions of other circuits or is contrary to any decision of this Court. There is no important question of constitutional law requiring review by this Court. This case has been prolonged by Petitioner beyond all reason.

WHEREFORE, Respondents herein respectfully submit that this petition for writ of certiorari should be denied.

Respectfully submitted,

CATHERINE A. FOLEY
Assistant Counsel
Department of General
Services
603 North Office Building
Harrisburg, PA 17125

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

| | | |
|---|---|---|
| JOSEPH R. CATERINA, Appellant | : | |
| vs. | : | |
| BLAKELY BOROUGH, et al., Appellees | : | No. 93-7565 |

MOTION FOR SUMMARY ACTION
AND IMPOSITION OF SANCTIONS

AND NOW, comes the Appellees, The General State Authority and the Commonwealth of Pennsylvania, acting by and through the Department of General Services, the Department of Transportation and the Department of Environmental Resources, and, pursuant to 3rd Cir.LAR 27.4, move this Honorable Court to affirm the Order of the U.S. District Court for the Middle District of Pennsylvania entered on August 18, 1993 to Civil Docket No. 3:CV-93-512 on the grounds that no substantial question is presented.

Appellees further move this Honorable Court to award just damages and single or double costs, pursuant to F.R.A.P. 38, to Appellees from Appellant on the grounds that Appellant's appeal is frivolous, is not taken in good faith, and is lacking in probable cause.

/s/ Michael J. Daley
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Respondents' Appendix

/s/ Catherine A. Foley
Attorney for Commonwealth
of Pennsylvania acting by and
through
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Dated: November 10, 1993

Supreme Court, U.S.
FILED
FEB 16 1995
OFFICE OF THE CLERK

(3)

No. 94 - 1231

in the

# Supreme Court Of The United States

October Term 1994

JOSEPH R. CATERINA
AND ALL OTHERS SIMILARLY SITUATED, ET AL.
Petitioners

vs.

BLAKELY BOROUGH; ARCHBALD BOROUGH; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; LACKAWANNA COUNTY; DEPARTMENT OF ENVIRONMENTAL RESOURCES OF PA.; DEPARTMENT OF GENERAL SERVICES OF PA.; GENERAL STATE AUTHORITY OF PA.; LACKAWANNA COUNTY SHERIFF'S OFFICE; UNITED STATES ARMY CORPS OF ENGINEERS; U.S. DEPARTMENT OF INTERIOR; CECO ASSOCIATES, INC., a Corporation of PA.; PA. DEPARTMENT OF TRANSPORTATION; THE LAW FIRM OF FOLEY, MCLANE, NEALON, FOLEY & MCDONALD; JOSEPH M. MCDADE; JOHN ORMASA; HILLS OF ARCHBALD; INC., a corporation of PA.; UNKNOWN OWNERS LEO ZINI & MARK ZINI, 528-526 SHORT AVE., PECKVILLE, PA.; U.S. DEPARTMENT OF SURFACE MINING IN N.E. PA.; and EDWARD J. GHILARDI; ET AL.

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

## PETITIONER'S REPLY BRIEF

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202 Kenyon Drive, Peckville, PA. 18452
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Feb. 15, 1995

7 pp

in the

# Supreme Court Of The United States

October Term 1994

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JOSEPH R. CATERINA
AND ALL OTHERS SIMILARLY SITUATED, ET AL.

Petitioners,

vs.

BLAKELY BOROUGH; ARCHBALD BOROUGH; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; LACKAWANNA COUNTY; DEPARTMENT OF ENVIRONMENTAL RESOURCES OF PA.; DEPARTMENT OF GENERAL SERVICES OF PA.; GENERAL STATE AUTHORITY OF PA.; LACKAWANNA COUNTY SHERIFF'S OFFICE; UNITED STATES ARMY CORPS OF ENGINEERS; U.S. DEPARTMENT OF INTERIOR; CECO ASSOCIATES, INC., a Corporation of PA.; PA. DEPARTMENT OF TRANSPORTATION; THE LAW FIRM OF FOLEY, MCLANE, NEALON, FOLEY & MCDONALD; JOSEPH M. MCDADE; JOHN ORMASA; HILLS OF ARCHBALD; INC., a corporation of PA.; UNKNOWN OWNERS LEO ZINI & MARK ZINI, 528-526 SHORT AVE., PECKVILLE, PA.; U.S. DEPARTMENT OF SURFACE MINING IN N.E. PA.; and EDWARD J. GHILARDI; ET AL.

Respondents.

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## PETITIONER'S REPLY BRIEF

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ON PETITION FOR WRIT OF CERTIORARI
TO THE THIRD CIRCUIT COURT OF APPEALS

---

Respondents' arguments highlight why this Court should grant the petition. Respondents concede that the District Court failed to address the Petitioners request for an Environmental Impact Statement (EIS) and that no EIS was ever obtained by the government. Further Respondents admit that the EIS is a Federal Law; The National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370(b), and imply that Federal moneys are involved.

Additionally Respondents cite that any flooding taking place after this flood project is built, that the flooding would be of a temporary nature only. The Petitioners have never been flooded what-so-ever in 75 to 100 years and have been free from this inherent danger! Why should Petitioners subjuate themselves to periodic inundation at this late date? Respondents concede the issues presented by the Petitioners.

These issues are now ripe for resolution by this Court. Now is the time to resolve these matters before any injuries are inflicted upon the Petitioners unnecessarily!

Furthermore! Eminent Domain Proceedings by the Respondents was not yet instituted at the time of the filing of the original Complaint in the District Court and was therefore a non-issue at that time.

No amount of compensation can be just enough to exposes one's family, home and property to the newly created 'inherent danger' of being exposed to not only the threat of flooding but of actual periodic inundation itself 2100% above normal for the watershed!

Possession of the cited property is fatally flawed in as much as a Writ of Possession was obtained without a hearing as is required by Law and Constitution and NO

ORDER or copy thereof, either by the Court or the Respondents, was given to Petitioners' Attorney who timely appeared and answered the Action Writ of Possession. Petitioners Preliminary Objections were cross-filed with District Court, Docket Entry 70; App. 55a with a copy of Complaint Docket Entry 1; App. 6a. Respondents may have committed a 'fraud' upon the Court who issued said Writ of Possession!

> Under 42 USC, Sections 1983, Civil Action for deprivation of rights 40a, and
> Under 42 USC, Sections 1985, Conspiracy to interfere with civil rights 40a, and
> Under 42 USC, Sections 1986, Action for neglect to prevent conspiracy 40a.

there is no diversity barring the District Court jurisdiction.

Anytime someone places the Petitioners' Family, Home and Possessions in 'inherent danger' unnecessarily against their will and without their consent the issue of Constitut-

ional rights and transgressions thereof is ripe for litigation and will windup in some Court and to place double cost sanctions upon said Petitioners only places more Constitutional fuel upon an already roaring Constituional fire, such as the instant case.

There exists a conflict with the prior decisions of the United States Court of Appeals, for the Third Circuit with regard to Frauds upon the Court as was instituted by some, if not most all, of the Respondents.

Cite:

Hazel-Atlas Glass Co. v. Hartford Empire Co. 322 U.S. 238-250; 64 S. Ct. 997; 88L Ed 1250 (1944) Pet Writ Cert 4,App.4

Root Refining Co. v. Universal Oil-Products Co., supra (CCA 3d, 1948) 169 F 2d514 534-535; Petitioners Writ Cert. 4, App.4

The Court failed to honor its' prior rulings with regard to the instant case.

## CONCLUSION

The Petitioners have expressed that the decisions are in conflict with other prior decisions of the lower Court and that the Court did have subject matter jurisdiction and a Federal Question was involved and that this Case has not been prolonged by the Petitioners .

WHEREFORE, for the foregoing reasons, the Petitioners herein respectfully submit that this petition for writ of certiorari should <u>be granted!</u>

Respectfully submitted,

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and all others similarly
situated,
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Date: 15 February 1995